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EXAMINER
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KELLS, ASHER

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* JOHN-RHYS NEWMAN, PASCAL WEVER, MARCO PAGLIA,  
DUNCAN BURNS, JULIAN BLEECKER, and JACOB ZUKERMAN

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Appeal 2016-003315  
Application 13/285,751<sup>1</sup>  
Technology Center 2100

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Before DEBRA K. STEPHENS, KEVIN C. TROCK, and  
MICHAEL M. BARRY, *Administrative Patent Judges*.

TROCK, *Administrative Patent Judge*.

DECISION ON APPEAL

*Introduction*

Appellants seek review under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1, 2, 4–7, and 9–22.<sup>2</sup> We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> Appellants indicate the Real Party in Interest is Nokia Technologies Oy. App. Br. 2.

<sup>2</sup> Claims 3, 8, and 23 are cancelled. Final Act. 2.

*Invention*

According to Appellants, the disclosure relates to the field of portable electronic device modes, associated methods, computer programs and apparatus. Spec. 1:5–6

*Exemplary Claim*

Claim 1 is reproduced below with disputed limitations emphasized:

1. An apparatus comprising:
  - at least one processor; and
  - at least one memory including computer program code,the at least one memory and the computer program code configured to, with the at least one processor, cause the apparatus to perform at least the following:
  - provide a first mode of operation for a portable electronic device, the first mode configured to allow general unlocked user interaction with the user interface of the portable electronic device, the first mode associated with allowing for the availability of one or more of a first level of power consumption and processor activity for the portable electronic device;
  - provide a second mode of operation for the portable electronic device, the second mode configured to allow locked user interaction with the user interface of the portable electronic device, the second mode associated with allowing for the availability of one or more of a second level of power consumption or processor activity for the portable electronic device;
  - wherein the locked user interaction of the second mode of operation allows for the user to provide one or more specific limited user inputs to the portable electronic device using the user interface of the portable electronic device, to directly interact with associated second mode output provided using the user interface in the second mode of operation, the one or more

specific limited user inputs not being associated with general unlocking of the portable electronic device to enter the first mode of operation; and

wherein the apparatus is configured to, in the second mode, *provide an indication of an event associated with second mode output*, the event being receipt of a message from a third party or a scheduled event, *the occurrence of the event triggering the availability, for a predetermined period of time following the occurrence of the event, in the second mode, of allowing at least one of the one or more specific limited user inputs associated with the second mode output to enable display of abbreviated second mode output for the event in response to said at least one of the one or more specific limited user inputs made within the predetermined period*,

abbreviated second mode output being an abbreviated version of output for the event available in the first mode; and

the at least one of the one or more specific limited user inputs comprising moving the portable electronic device.

### *Rejections*

Claims 1, 2, 4–7, 9–12, 16, 19, and 20–22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Makela et al. (US 2007/0300140 A1; Dec. 27, 2007) and Beeman et al. (US 7,250,955 B1; July 31, 2007).

Claims 13–15, 17, and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Makela, Beeman, and Moore et al. (US 2010/0123724 A1; May 20, 2010).

### ANALYSIS

We have reviewed the Examiner's rejections and the evidence of record in light of Appellants' arguments that the Examiner has erred. We disagree with Appellants' arguments and conclusions. We adopt as our

own: (1) the findings and reasons set forth by the Examiner in the Office Action from which this appeal is taken and (2) the findings and reasons set forth in the Examiner's Answer. We concur with the conclusions reached by the Examiner and further highlight specific findings and argument for emphasis as follows.

*Independent Claims 1, 21, and 22.*

Appellants contend the Examiner erred in rejecting independent claims 1, 21, and 22 because the combination of Makela and Beeman fails to teach or suggest:

[P]rovid[ing] an indication of an event associated with second mode output . . . the occurrence of the event triggering the availability, for a predetermined period of time following the occurrence of the event, in the second mode, of allowing at least one of the one or more specific limited user inputs associated with the second mode output to enable display of abbreviated second mode output for the event in response to said at least one of the one or more specific limited user inputs made within the predetermined period,

as recited in those claims. App. Br. 9–12; Reply Br. 1–4.

Appellants argue that the notification window of Beeman is not provided in response to a user's movement input. App. Br. 10. Appellants also argue Makela's menu options 47 and 49 are not provided in response to a user's movement input. *Id.* at 10–11. Appellants further argue that the abbreviated content of Makela and Beeman are automatically shown to the user upon the event occurring and remain displayed until the user interacts with the device. *Id.* at 11 (citing Beeman 7:23–25; Makela ¶ 43). Although Appellants concede Makela makes a general statement that a gesture input may also be movement of a device, Appellants argue that there is no

disclosure in Makela of how a movement user input may be used to enable display of content. *Id.* at 12 (citing Makela ¶ 20). Finally, Appellants argue that the combination of Makela and Beeman is improper because there is no motivation for a skilled person to combine only the fade-in/fade-out aspect of Beeman's notification window and associated controls without also choosing to display its abbreviated content. *Id.* at 12–13.

The Examiner finds, however, and we agree, that Makela teaches the receipt of a specific limited user input to cause display of abbreviated output in a locked mode. Final Act. 5; Ans. 16. The Examiner further finds, and we agree, Makela teaches that the interface of Figure 3B is presented in response to user input. Ans. 16–17 (citing Makela ¶¶ 37, 42). Makela explains that a gesture input enables the display of abbreviated second mode output for an event. *Id.* at 17–18 (citing Makela ¶ 28). The Examiner also finds, and we agree, Makela teaches that a gesture user input includes moving (e.g., shaking) a portable electronic device. *Id.* (citing Makela ¶ 20). The Examiner relies on Beeman to teach that an occurrence of an event may trigger the availability, for a predetermined time following the occurrence of an event, of allowing specific limited user input. Final Act. 6; Ans. 16. Therefore, we are not persuaded the combination of Makela and Beeman fails to teach the disputed limitation.

The Examiner has also articulated reasoning with rational underpinning to support the legal conclusion of obviousness. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). A reason to combine teachings from the prior art “may be found in explicit or implicit teachings within the references themselves, from the ordinary knowledge of those skilled in the art, or from the nature of the problem to be solved.” *WMS Gaming Inc. v.*

*Int'l Game Tech.*, 184 F.3d 1339, 1355 (Fed. Cir. 1999) (citing *In re Rouffet*, 149 F.3d 1350, 1357 (Fed. Cir. 1998)). “Under the correct [obviousness] analysis, any need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed.” *KSR*, 550 U.S. at 420.

The Examiner has articulated reasoning with a rationale from Beeman for the motivation to combine the teachings of Makela and Beeman. Specifically, the Examiner finds, and we agree, “[s]uch a modification would give a user an appropriate amount of time to be notified of the message and respond accordingly, without the notification taking up space on the display for too long or leaving the device subject to unintentional user input.” Final Act. 6; Ans. 18. (citing Beeman 2: 4–17.). Appellants’ arguments do not provide sufficient evidence or a technical line of reasoning to persuade us this finding constitutes error. Arguments of counsel cannot take the place of factually supported objective evidence. *See, e.g., In re Huang*, 100 F.3d 135, 139–40 (Fed. Cir. 1996); *In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984).

In reply, Appellants raise new arguments for the first time that were not raised in Appellants’ opening brief. For example, in their Reply Brief, Appellants now argue the Examiner used hindsight to find that Beeman teaches an interaction with a device to be available for a limited time period (Reply Br. 2) and that Makela requires a user input to change modes to view content relating to a missed call or message (Reply Br. 4). These new arguments are not entitled to our consideration because they were not initially presented in Appellants’ opening brief and were not raised in response to a new argument presented by the Examiner in the Answer.

Appellants could have made these arguments in their opening brief, but did not. The Examiner provided a detailed explanation of the evidence and the basis for rejecting the claims at issue as obvious over the combination of Makela and Beeman. *See* Final Act. 3–7. Appellants have not explained why these arguments were not presented until the Reply Brief, nor is it apparent that these arguments were necessitated by an argument or rationale presented by the Examiner in the Answer for the first time, or any other circumstance constituting “good cause” for their belated presentation. *See* 37 C.F.R. § 41.41(b)(2) (2016). Therefore, Appellants’ arguments are waived.

Accordingly, we are not persuaded the Examiner erred in finding the combination of Makela and Beeman teaches or suggests:

[P]rovid[ing] an indication of an event associated with second mode output . . . the occurrence of the event triggering the availability, for a predetermined period of time following the occurrence of the event, in the second mode, of allowing at least one of the one or more specific limited user inputs associated with the second mode output to enable display of abbreviated second mode output for the event in response to said at least one of the one or more specific limited user inputs made within the predetermined period,

as recited in the independent claims. Therefore, we sustain the Examiner’s rejection of independent claims 1, 21, and 22.

*Remaining Claims 2, 4–7, and 9–20*

Appellants rely on the same arguments they made with respect to the independent claims to assert that the Examiner erred in rejecting claims 2, 4–7, and 9–20. App. Br. 9–13. Based upon the analysis provided above, we are not persuaded the Examiner erred in rejecting these claims. *See* 37



C.F.R. § 41.37(c)(1)(iv) (2014); *In re Lovin*, 652 F.3d 1349, 1356 (Fed. Cir. 2011) (“We conclude that the Board has reasonably interpreted Rule 41.37 to require applicants to articulate more substantive arguments if they wish for individual claims to be treated separately.”). Accordingly, we sustain the Examiner’s rejection of claims 2, 4–7, and 9–20.

#### DECISION

We AFFIRM the Examiner’s rejection of claims 1, 2, 4–7, and 9–22.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED